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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	REPORT TO CONGRESS
	)	

COMMENTS OF AMERICA ONLINE, INC.

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Dated: January 26, 1998

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America Online, Inc. ("AOL"), by its attorneys, and pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission") on January 5, 1998, hereby submits these comments for consideration in connection with the Report to Congress on the implementation of the provisions of the Telecommunications Act of 1996 ("1996 Act") relating to universal service.[1/]

INTRODUCTION AND SUMMARY

Since its founding in 1985,[2/] America Online has helped the promise of the "Information Age" emerge to create a vibrant Internet online service medium capable of delivering information, entertainment and communications to consumers around the globe. Today, AOL's Internet online service has approximately 11 million members world-wide, with local dial-up access in roughly 700 cities in the United States alone, providing original programming and informative content, e-mail capabilities, access to the World Wide Web and informational

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1/ Public Notice, Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996, CC Docket No. 96-45, DA 98-2 (rel. Jan. 5, 1998).

2/ Headquartered in Dulles, Virginia, AOL is currently the leading Internet online company, with operations in the United States, Canada, the United Kingdom, France, Germany, Sweden, Switzerland, Austria and Japan. An Australian service is planned for 1998.

databases, electronic magazines and newspapers, and opportunities to participate in online "chat" conferences.[3/] The vast majority of AOL's members are residential consumers who use the service for personal education, information, recreation and entertainment.[4/] Without question, the Internet -- and the advanced services it supports and stimulates -- has proved in recent years to be the embodiment of the often discussed and much heralded "information superhighway."[5/]

In requiring the FCC to submit a Report on universal service and related statutory and policy implementation issues ("Report"),[6/] Congress has effectively asked the FCC to address whether telephone-like regulation and telephone taxes will be extended to advanced and Internet online services. AOL submits that the FCC should continue to pursue an unregulated framework that fosters growth, innovation and diversity. Calls for an alternative regime -- where government regulatory directives and taxes, rather than the marketplace, define the parameters of new services -- should be rejected in favor of a forward-looking market-driven approach. To stimulate the continued evolution of a vibrant and competitive arena, deregulation should continue to prevail as the watchword of U.S. telecommunications policy.

As a result of market-driven and future-directed policies, American schoolchildren are now beginning to have access to vast quantities of information, whether they live in urban New York City or rural Montana. This new access is helping to yield the prepared and educated next

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3/ A recent survey by Nielsen Media Research reports that there are 58 million Internet users in the United States and Canada. See G. Christian Hill, Adult Net Users in U.S., Canada Put at 5.8 Million, Wall St. J., Dec. 11, 1997, at A11.

4/ Through its services, AOL provides consumers with the sense of a unique AOL community. This "AOL experience," with its variety of interactive features such as news, sports, weather, financial information and transactions, and electronic shopping, is only one of many ways that consumers can enrich directly their personal, professional and community interactions through the use of advanced technologies and services.

5/ See Vice President Al Gore, Remarks at the National Press Club (Dec. 21, 1993) <http://www.iitf.nist.gov.documents/speeches/gore_speech122193.html>. Incredibly, in August, 1981, there were 213 computers attached to the Internet. By August, 1997, this number had exploded to over 19 million. Network Wizards, <http://www.nw.com/zone/host-court-history> Jan. 22, 1998.

6/ Pub. L. No. 105-119, 111 Stat. 2440 (approved Nov. 26, 1997).

generation upon which our future depends. Telecommuting and distance learning are enhancing skills and improving training and efficiency in the performance and productivity of our workforce.

Similarly, access to advances in health care and patient education are starting to depend less on geographic proximity to state of the art medical facilities and more on access to advanced bandwidth and services as telemedicine applications emerge. Indeed, every recent study highlights the extraordinary impact that the explosive growth of advanced services and technologies has had on the American economy.[7] Today, estimates are that the information technology sector represents 50 percent of the nation's economic growth.[8] Internet business alone added $200 billion to the 1996 Gross Domestic Product ("GDP"),[9] with information technology and information technology-dependent business now accounting for almost $1 trillion of the U.S. economy.[10] Continued development of the Internet's full potential could mean 50-70 percent more new jobs with additional economic growth of almost $900 billion by the year 2005.[11]

Significantly, this growth in advanced communications technologies has contributed to the stunning success of the over $230 billion telecommunications industry, which is "undergoing

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[7] See, e.g., Dr. Robert B. Cohen, Economic Strategy Institute: An Economic Model of Future Changes in the U.S. Communications and Media Industries, (May, 1997) ("ESI Communications Study"); Takumo Amano and Robert Bluhm, The Internet and the Economy, Global Internet Project, <http://www.gip.org/GIP9E1.htm> (1997). Kevin Werbach, Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper No. 299. FCC, March 1997, at I-V, 21-25. See also, Steel versus Silicon, Forbes, July 7, 1997, at 130.

[8] U.S. to Train Workers for Tech Jobs, Washington Post, Jan. 12, 1998, at A7.

[9] According to Investment Bankers, Takumo Amano and Robert, this represents 3% of the GDP. See The Internet and the Economy, supra. See, also, Software Jobs Go Begging, Threatening Technology Boom, The New York Times, Jan. 13, 1998, at D6, citing National Software Alliance's analysis of Bureau of Labor Statistics data. Cf. ESI Study, at Executive Summary and 9.

[10] See Erik Olbeter, Finding the Key: Promoting National and Economic Security Interests in Cryptography Policy, ESI, Washington, D.C. (1998), ("ESI Cryptography Study") at 3.

[11] See ESI Communications Study, supra, at 9.

a period of unparalleled prosperity."[12] Wall Street analysts agree.[13] In fact, the strong earnings of many of the nation's largest telecommunications carriers have been attributed directly to the growth of orders for second lines for consumers "surfing the Internet" and the penetration of other advanced services, ranging from voice mail to remote home and business monitoring.[14]

As the FCC undertakes this review of its implementation of the universal service provisions of the 1996 Act, it should recognize the extraordinary global consensus that has emerged in favor of an industry-led, market-driven approach to Internet issues:

- The White House has clearly stated that unnecessary regulation will stifle the growth of the Internet;[15]
- The European Commission has rejected calls to regulate Internet services;[16] and
- The Japanese Ministry of International Trade and Industry has issued a comprehensive report strongly favoring competition and technology, rather than regulation, to harness the Internet's economic benefits.[17]

While the interdependency of the telecommunications and advanced services sectors of our economy is indisputable, it would be folly to conclude that telephone-like regulation and taxes should therefore be expanded to encompass advanced services and functionalities. Redefining some or all Internet or advanced services as "telecommunications services," or

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[12] BancAmerica Robertson Stephens Initiates Coverage of the Wireline Telecommunications Industry, PR Newswire, Jan. 9, 1998.

[13] See, e.g., Goldman Sachs, U.S. Research-Telecommunications Services, Fourth Quarter Preview, Jan. 6, 1998; BancAmerica Robertson Stephens, Large Telephony Industry, Jan. 5, 1998; Credit Suisse, First Boston, Report on BellSouth Corporation, Apr. 11, 1997, at 1 (noting that revenue from additional lines was over $100 million in just one quarter); Credit Suisse, Boston Report on SBC/Pacific Telesis, Jan. 28, 1997 at 3 (noting that penetration of second lines was more than 20% for Pacific Telesis).

[14] Street Likes Sweet Sound of Baby Bells, Wall Street Journal, Jan. 9, 1998 at C1. Additional line revenues were expected to exceed $3 billion in 1996 alone. See Second Phone Lines: A Chicken in Every Pot?, IDC/Link, No. B13719 in Press Release, Aug. 4, 1997.

[15] See A Framework for Global Electronic Commerce, The White House, July 1, 1997.

[16] Commission Notice Concerning the Status of Voice on the Internet Pursuant to Directive 90/388/EC, O.J. Official Journal of the European Communities (98/C 6/04), C 6/4, Jan. 10, 1998.

[17] Towards the Age of Digital Economy, Ministry of International Trade and Industry, Japan, May, 1997.

enlarging significantly the category of "telecommunications carriers" to include for the first time Internet Service Providers ("ISPs") would be precisely the wrong approach. Indeed, the issue is not whether and how to shift burdens from one industry to another, but rather how to create an environment where economic and competitive benefits are maximized, robust growth is fostered, and government regulation diminishes.

Since the advent of data communications, federal law and policy has wisely concluded that these tremendous public interest benefits are best attained outside of the regulatory regime designed for monopoly-based, circuit-switched voice telephony services.[18] The 1996 Act embodies this pro-competitive direction as it promotes deregulation, so that competitive risk-taking can be rewarded freely in the marketplace. In the same vein, the FCC should reaffirm its "hands off" position and conclude that the promotion of historic universal service goals and the creation of a new level of "universal services" to benefit United States consumers can both be best achieved by pro-competitive and market-driven policies.

Finally, it is vital to bear in mind that during this period of unsurpassed growth in computer services and capabilities and strong earnings in the telecommunications industry, the pace of innovation and advanced service deployment by incumbent telecommunications carriers has not kept up with the demands of the marketplace. While the trends in data traffic have been clear and well-publicized, the vast majority of consumers still have no choice but to rely solely on the circuit-based public switched network which does not adequately serve their needs.[19]

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[18] Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities, Tentative Decision, 28 FCC 2d 291 (1970); Final Decision and Order, 28 FCC 2d 267 (1971) (Computer I) (subsequent history omitted); Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980) (Computer II) (subsequent history omitted); Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Computer III) (subsequent history omitted).

[19] To reach its largely residential members, AOL presently must almost always rely upon the public switched telephone network, as it is the only available communications facility that reaches the overwhelming majority of

Instead of expanding regulation and saddling emerging advanced services with the regulatory obligations and burdens that were primarily designed to prevent abuse by monopoly carriers, the overriding goal of government policy should be to promote the development of affordable, ubiquitous, high-bandwidth, packet-based communications facilities that are increasingly necessary to bring those advanced services to the marketplace.

I. RECLASSIFYING ADVANCED SERVICES AS REGULATED BASIC TELECOMMUNICATIONS SERVICES WOULD UNDERMINE THE ROBUST AND DEVELOPING COMPETITIVE ENVIRONMENT FOR INTERNET SERVICES

A. The Long Standing Market-Based Federal Policy for Advanced Services Has Redounded to the Benefit of Consumers and Well Served the Public Interest

In 1966, the FCC first inquired into the "interdependence of computer and communications services and facilities" in order to consider and resolve regulatory and policy questions regarding the appropriate scope of its jurisdiction over and role in "hybrid" computer and communications services as they emerged.[20] At that time, the computer/high technology industries represented a small percentage of the nation's economy.[21] Personal computers of even

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homes that AOL serves. In offering its services to the public, AOL recognizes the need to deliver to consumers a reliable and efficient product that combines innovation and high-quality at an affordable price, especially as the industry is growing at unprecedented rates. Today, AOL members are spending more than 6 million total hours online in the average day, with an average of 17 million E-mails and 350 million web hits each day. As AOL has stated previously, the architecture of the public switched telephone network is not optimized for data traffic, and can serve to thwart the efficient delivery of AOL's service to its members. See Usage of the Public Switched Network by Information Service and Internet Access Provider, CC Docket No. 96-263, Comments of America Online, Inc., Mar. 24, 1997 at 4.

[20] See Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities, 7 FCC 2d 11 (1966); see also, Computer I, Tentative Decision, 28 FCC 2d 291, 291-292 (1970).

[21] Computer/high technology comprised such a small segment of the nation's economy that the Bureau of Labor Statistics did not have an occupational category devoted to capturing the percentage of the labor force employed in these industries. Statement of Thomas Hale, Ph.D., Economist, Bureau of Labor Statistics, Jan. 21, 1998.

the most elementary kind were years away.[22] Telecommunications services revenues, on the other hand, were roughly $14 billion.[23]

That inquiry led to the development of an express and consistent policy to foster the growth of computer and related services without the burdens of the regulatory structure that was largely created to protect the public interest in a monopoly environment.[24] By allowing these "enhanced services" to develop free from regulation, the Commission fulfilled its mandate, under the Communications Act. to promote rapid, efficient service at reasonable charges.[25] Early on, the Commission understood the overarching benefits of a market-based approach, recognizing that new services would be the cornerstone of future economic growth.[26] Since then, each time

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[22] The first single chip CPU was developed in 1971. See Nikhil Huthseeing, Faster, Cheaper, Better - Forever, Forbes, July 7, 1997, at 176.

[23] FCC, Common Carrier Bureau, 1996 Statistics of Communications Common Carriers (Dec. 5, 1997) at Table 6.7.

[24] See Computer I, 28 FCC 2d 267 (1971); Computer II, 77 FCC 2d 384 (1980); Computer III 104 FCC 2d 958 (1986). For almost twenty years, the FCC has operated under a regulatory framework that distinguishes between "basic" telecommunications services and "enhanced" services. Pursuant to FCC rules, an "enhanced service" is one that "employs computer processing applications that: (1) act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information; or (2) provide the subscriber additional, different, or restructured information; or (3) involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a). Both the FCC and incumbent carriers have repeatedly affirmed the "enhanced" nature of Internet services. See, e.g., Federal-State Joint Bd. On Universal Service, Report and Order, 12 FCC Rcd. 8776, 9180, ¶ 789 (rel. May 8, 1997) ("Universal Service Order"); Bell Atlantic Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, CCB Pol 96-09, DA 96-982 (rel. June 6, 1996). See also Reply Comments of Bell Atlantic, File No. CCB/CPD 97-51 (Dec. 4, 1997); Reply Comments of SBC, File No. CCB/CPD 97-51 (Dec. 4, 1997) at 1-2. This structure, which was adopted first in 1980 in the FCC's Computer Inquiry II proceeding, reflects a fundamental understanding of the need to remove "the threat of regulation from markets which were unheard of in 1934 and bear none of the important characteristics justifying the imposition of regulation." Computer II, 77 FCC 2d at 423. 101.

At roughly the same time as the FCC developed its regulatory framework, "information services" were identified in the Modification of Final Judgment ("MFJ") as distinct from basic transmission services. United States v. AT&T, 552 F. Supp. 131, 225-234 (D.D.C. 1982). (Subsequent history omitted). See also, United States v. Western Electric Co., 714 F.Supp. 1, 5 (D.D.C. 1988). Pursuant to the MFJ, information services encompassed both services which involved no control by the carrier over the content of information (such as traditional data processing services) and services in which the carrier would control both the transmission of the information and its content. 552 F. Supp. at 179. The MFJ Court defined "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications." Id. at 229.

[25] 47 U.S.C. § 151. Notably, until the 1996 Act, the FCC generally viewed its "universal service" goals as an outgrowth of this provision of the Communications Act.

[26] See, e.g., Computer II, 77 FCC 2d at 422-23. Significantly, even before the adoption of Computer II, the FCC had stressed that the computer industry "has become a major force in the American economy" and emphasized that "its importance to the economy will increase in both absolute and relative terms in the years ahead." Computer I, 28 FCC 2d at 268-69, ¶ 7.

federal policy makers have re-examined this issue, they have consistently reaffirmed this approach, including in the adoption of the landmark 1996 Act.[27]

Today, over 30 years after the FCC first considered the treatment of computer and technological developments that utilize telecommunications services, the amazing growth of the advanced technology and computer services industries continues to confirm the wisdom of this competitive policy.[28] At the same time as the market for telecommunications services has skyrocketed to over $230 billion in revenues in 1997,[29] with growth and strong earnings for all sectors, estimates are that technology and advanced services now account for over 50 percent of the nation's economic growth[30] and represent almost $1 trillion of the U.S. economy.[31] Expectations are that information technology-based activities will increasingly represent a larger

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[27] In addressing the regulation of services, the 1996 Act established specific definitions for "information services," "telecommunications," and "telecommunications service" based upon the terms used in the MFJ. See H.R. Rep. No. 204, Part 1, 194th Cong., 1st Sess. 125 (1995) ("'Information service' and 'telecommunications' are defined based on the definition [sic] used in the Modification of Final Judgment"); cf. United States v. AT&T, 552 F. Supp. at 229. In the House-Senate conference on the 1996 Act, the Senate receded to the House on the definition of information service. The House receded to the Senate on the definition of telecommunications, but the House and Senate bills contained similar definitions of this term. H.R. Conf. Rep. No. 458, 1104th Cong., 2d Sess. 116 (1996). "Information service" means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of such capability for the management, control, operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. §153(20). By contrast, "telecommunications" means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Id. § 153(43). "Telecommunications service" is the offering of telecommunications for a fee directly to the public; and a "telecommunications carrier" is any provider of telecommunications services. Id. §§ 153(46), (44). In implementing the 1996 Act, the FCC has expressly recognized that that this definitional structure parallels its basic/enhanced framework. See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 (rel. Dec. 24, 1996), at ¶ 102 ("all of the services that the Commission has previously considered to be 'enhanced services' are 'information services.'"); United States v. AT&T, 552 F. Supp. at 178, n.198 (subsequent history omitted) ("'enhanced services' . . . are essentially the equivalent of the 'information services' described in the proposed decree"). Under present law, therefore, all "enhanced services" are by definition "information services."

[28] Notably, the FCC rejected proposed regulatory definitions, including for "hybrid" services, on the grounds that they would likely result in the "direct or indirect expansion of regulation over currently unregulated vendors of computer services and deprive consumers" of innovative services. Computer II, 77 FCC 2d at 425, ¶ 108.

[29] Estimated revenues for local exchange services in 1997 were 94.3 billion, for long distance, $52.6 billion, for leased lines, $33.38 billion, for broadband, $2.40 billion, and for wireless services, $19.7 billion. See ESI Study at 13; cf. Goldman Sachs, Telcos and Long Distance, Telecom's New World Order, (Apr. 11, 1997); Industry Analysis Division, Federal Communications Commission, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Nov. 1997 at 3 (reporting $222 billion in telecommunications industry revenues for 1996).

[30] See The Internet and the Economy, supra.

[31] ESI Cryptography Study, supra.

and even more important component of our national economy in the future with potential economic growth of $887 billion by 2005.[32/] E-Commerce alone is expected to grow 500% in 1998 with estimates of $327 billion by 2002.[33/]

The importance of the advanced services that are now available to the American consumer cannot be overstated.[34/] For instance, the development of the Internet means that rural consumers can now readily access the same information as consumers living in more populated areas.[35/] Distance learning and telecommuting are increasingly becoming part of the fabric of American life. Electronic commerce promises a new expansion of the economic benefits of a competitive marketplace.[36/] Telemedicine is enabling health care providers to reach rural residents more efficiently, affording them access to medical advances that were previously difficult or impossible to obtain.[37/] In short, as Congress emphasized in the 1996 Act, "[T]he rapidly developing array of Internet and other computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens . . . [and] offer a forum for a true diversity of political

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[32/] ESI Communications Study, supra, at 9.

[33/] See ESI Cryptography Study, supra, and Forrester Research, 28 July, 1997, <http://www.forrester.com/press/pressrel/970728BT.htm>.

[34/] Advanced services include a range of communications-dependent services including Internet online services, voice mail, voice information services, directory search capabilities, and others.

[35/] Over 17% of AOL's local phone numbers are in rural counties. See Greenstein, "Universal Service in the Digital Age: The Commercialization and Geography of U.S. Internet Access," mimeo, 1998, Table 8, at <http://skew2.kellogg.nwu.edu/ngreenste/research/papers/ISPACCES2.pdf> on January 22, 1998. In fact, over 87% of the U.S. population lives in a county with at least one ISP. Id.

[36/] See, e.g., Survey: One Third of Retailers Going Online, Reuters, Jan. 20, 1998. Not only are E-commerce revenues and sales themselves exponential, estimates are that the widespread usage of the applications could also save businesses $560 billion annually in carrying costs associated with inventory control, stock, and management. See ESI Cryptography Study, supra, at 63.

[37/] Universal Service Order, supra at 9106, ¶ 630.

discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[38]

Moreover, the deployment of advanced services and other high technology applications continue to be the engine driving significant productivity gains and economic growth in the U.S. economy generally. Many of the nation's largest and most productive companies didn't even exist five or ten years ago.[39] Many of these companies are deploying infrastructure that is critical to our future, especially for data-related applications.[40] Revenues, employment and opportunities continue to surge.[41]

It is the great promise of these services that has caused deregulation generally to become the watchword of sound telecommunications policy making. For example, the unprecedented agreement reached by the World Trade Organization's ("WTO") Negotiating Group on Basic Telecommunications on February 18, 1997, to which 65 countries have committed generally, reflects the recognition that the surest and quickest way to bring diverse, innovative services to consumers at affordable prices is to minimize regulatory interference and allow market forces to

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[38] 47 U.S.C. § 230(1), (3) (1996).

[39] Netscape, for instance, was founded as recently as 1994, while AOL was founded a little over a decade ago in 1985. See <http://www.netscape.com/company/about/growth.html>; <http://www.aol.com/corp/profile>. Other companies like Microsoft, Computer Associates, Compaq Computer, Oracle and Cisco Systems came out of nowhere to make it into Forbes 1997 Top 100 Largest Companies (electronics, office equipment and software companies comprised 15.3% of the top 100 companies). See Steel Versus Silicon, Forbes, July 7, 1997 at 130, 134.

[40] For example, Cisco Systems, founded in 1984, employed 10,000 people by 1997 and sold $6.4 billion worth of "networking solutions . . . includ[ing] routers, LAN, WAN switches, dial and other access solutions, SNA-LAN integration solutions, Web site management tools, Internet appliances, and network management software. See Cisco Systems Annual Report. Cisco obtained a remarkable $3 billion of its sales over the Internet in 1997. Tim Clark, "Net Earnings: E-commerce in 1997," see also, News.com, <http://www.news.com/News/Item/0,4,17610,00.html>. See also, Qwest Communications International, which plans to spend around $1.8 billion by the end of 1999 building the nation's largest fiber optic network, Inter@active Week, Aug. 27, 1997 at <http://www.zdnet.com/intweek/daily/90827g.html> on Jan. 24, 1998. Similar networks are also planned by IXC Communications, Inc., Williams Companies and Level 3 Communications, Inc. See Keller, "Ex-MFS Managers Plan to Build Global Network Based on Internet." Wall St. J., Jan. 20, 1998, at A3.

[41] According to a recent study, from 1990 to 1996, as high technology revenues increased 57 percent to $866 billion, employment rose 7.2 percent to 4.26 million. "Cybernation: The Importance of the High Technology Industry to the American Economy," American Electronics Assn., 1997, chs. 1, 3. Information Technology Field Is Rated Largest U.S. Industry, The New York Times, Nov. 18, 1997, at D12.

work.[42] On January 15, 1998, the European Commission decided that it would not subject emerging "voice on the Internet" services to basic telecommunications regulation.[43] Likewise, in adopting its "Framework for Global Electronic Commerce,"[44] the Administration premised its recommendations upon the notion that government should avoid undue involvement in the development of the information technology industry and recognize the unique qualities of the Internet.[45]

It is against the backdrop of this successful policy approach that the issues raised by Congress should be addressed. The core issue is not how to create a regulatory scheme that shifts costs and burdens from one industry to another, or how to serve certain special interests at the expense of others, but rather, how to serve best the national interests in vibrant economic growth and diverse social, political and educational well-being. Surely, if we are to ensure that the information-based, technology rich future fulfills its promise, public policy must be farsighted and support innovation, growth and diversity.

B. Saddling New Advanced Services With a Regulatory Regime Designed in a Monopoly Environment For Telecommunications Carriers Would Stymie Growth to the Detriment of Consumers

In seeking a review of the FCC's implementation of the universal service provisions of the 1996 Act, Congress has essentially raised the issue of whether advanced and Internet Service

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[42] In fact, the agreement mirrors the 1996 Act. Compare Fourth Protocol to the General Agreement on Trade in Services, WTO Doc. S/L/20 (April 30, 1996), Annexed Schedules of Specific Commitments and Lists of Exemption from Article II, European Communities and their Member States, Schedule of Specific Commitments, Supp. 3 at 8-10, WTO Doc. GATS/SC/31/Suppl.3 (Apr. 11, 1997) (incorporating Reference Paper 36 I.L.M. 367 (1997)) with 1996 Act, Pub. L. No. 104-104. By some estimates, the European community alone stands to gain $288 billion from cost savings and quality improvements from 1997 to 2010 as a result of this deregulatory approach. See Ben Petrazzini, Global Telecom Talks: A Trillion Dollar Deal, 3 (1996) (estimates from chart prepared by Gary Hufbauer, Institute for International Economics).

[43] Commission Notice Concerning the Status of Voice on the Internet Pursuant to Directive 90/388/EC, supra.

[44] A Framework for Global Electronic Commerce, The White House, July 1, 1997.

[45] Id.

Providers ("ISPs") should be swept into the regulatory classification of "telecommunications carriers." Today, telecommunications carriers providing domestic and international telecommunications services are subject to the communications laws, regulations, and policies of the federal government and over fifty state jurisdictions applicable to common carriers.[46] These legal and regulatory requirements are extensive, including certification requirements,[47] tariff filing obligations,[48] reporting and fee requirements[49] and monitoring and compliance duties.[50]

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[46] In addition to the fifty states, there are several other regulatory jurisdictions to which a provider may be subject, including Puerto Rico and the District of Columbia.

[47] The FCC has granted a blanket certification to nondominant carriers providing domestic, interstate, interexchange service. See 47 C.F.R. § 63.07; Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor, Fifth Report and Order, 98 FCC 2d 1191, 1210 (1984). However, carriers providing international common carrier services still have to obtain certification from the FCC, see 47 C.F.R. § 63.18, as do carriers providing intrastate telecommunications services. These state requirements vary and can be extensive. The Connecticut Department of Public Utility Control, for example, requires an applicant for certification to participate in a public hearing. See Conn. Agencies Regs. § 16-247c-3(e) (1997). Meanwhile the Public Service Commission of Delaware ("DEPSC") requires an applicant that seeks to provide local exchange and interexchange service to file two separate applications, pay application fees of $3,000.00 and $750.00 respectively, and post a bond of $100,000.00 if the carrier requires its subscribers to pay deposits. See DEPSC Sale, Resale, and Other Provision of Intrastate Telecommunications Service, Order, Docket No. 10 (rel. June 18, 1991); DEPSC Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Service Market, Order, Docket No. 45 (rel. Apr. 8, 1997).

[48] The total time it takes to complete the process of obtaining certifications and approval of tariffs from all state public service commissions and the FCC can range from six months to a year or more, depending upon the jurisdiction. The cost of this endeavor alone can be hundreds of thousands of dollars.

[49] For example, an interexchange carrier providing interstate and international telecommunications services must file most or all of the following reports with the FCC at least annually: (1) regulatory fees report and payment; (2) a Universal Service Worksheet filing; (3) a Telecommunications Relay Service Fund filing; (4) an international traffic report; (5) an international circuit status and addition report; (6) a report on the division of international toll communications charges; (7) a report on international private line traffic; (8) a contracts report, if, in providing international telecommunications service, the IXC enters into a contract with another carrier; (9) for designated IXCs with operating revenues of $100 million or more, quarterly reports showing, inter alia, revenues, expenses, taxes, plant in service, other investment and depreciation reserve; (10) an employment report; (11) an annual financial report; and (12) service outage reports in the event of an outage. See 47 C.F.R. §§ 1.1151, 54.703, 54.713, 64.604(c)(4)(iii), 43.61, 43.82, 63.15, 43.53, 43.51, 43.22, 1.815, 43.21, 63.100; fONOROLA Corp., 9 FCC Rcd 4066 (1994). State requirements can also be onerous. For instance, New York requires each year: (1) an annual report; (2) a telecommunications competition monitoring report; (3) a service level report defining weakspot service levels; (4) a regrade requests report; (5) a surveillance level failure and service inquiry report if certain levels of service are not met; and (6) service interruption reports in the event of outages. See 16 NYCCR Part 641, 603.10(c), 603.12, 603.10(d), 603.13, 603.10; NYPSC, Proceeding on Motion of the Commission to Monitor the Development of Competition, Case No. 96-C-0647 (May 20, 1997).

[50] Telecommunications carriers must be in compliance with constantly changing obligations. For instance, even minor rule changes, such as rules regarding the rate of interest carriers may charge customers on deposits can require tariffing changes, as well as billing system and accounting changes. See NYPSC, Amendments to Chapter II, Subchapter A, Part 90.3, Case 97-M-0623, Oct. 27, 1997. Further, at the federal level alone there are numerous proceedings ongoing that directly affect a telecommunications carrier's provision of service, including proceedings on universal service, access charge reform, interconnection, detariffing, use of customer proprietary network information and numbering issues.

Moreover, the particular obligations of a telecommunications carrier vary from jurisdiction to jurisdiction, with certain requirements particularly onerous in a fast-moving industry like the advanced technology business.[51/] The annual monetary costs to a telecommunications carrier of conducting these and related regulatory and legal activities can be millions of dollars and consume thousands of man hours. And, as important, these obligations divert company resources from their core endeavors -- the provision of innovative, diverse, value-added services to consumers.

In addition, telecommunications carriers are subject to the overarching duties that define their status as common carriers. Title II of the Communications Act of 1934[52/] requires, among other things, the provision of service upon reasonable request at just and reasonable rates on a nondiscriminatory basis,[53/] the filing of tariffs,[54/] interconnection,[55/] the duty to comply with interoperability and access by persons with disabilities requirements,[56/] customer proprietary network information obligations[57/] and compliance with the Communications Assistance for Law Enforcement Act.[58/] Further, the FCC may also prescribe carriers' rates and practices, order refunds, make a valuation of the carrier's property, approve investments, inquire into the

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51/ For example, in New York, carriers must obtain prior approval from the Public Service Commission ("NYPSC") for the issuance of stock, bonds and other forms of indebtedness, as well as for the transfer and ownership of 10% or more of the company's stock. The NYPSC also maintains control over holding companies and over transactions between affiliated interests of carriers, deeming 1% or more ownership a substantial interest. See N.Y. Pub. Serv. Law §§ 100, 101 & 110 (1997).

52/ 47 U.S.C. § 201 et seq.

53/ 47 U.S.C. §§ 201, 202.

54/ 47 U.S.C. § 203.

55/ 47 U.S.C. § 251(1).

56/ 47 U.S.C. §§ 255, 256.

57/ 47 U.S.C. § 222.

58/ 47 U.S.C. § 229.

management of the carrier, and prescribe and oversee a carrier's accounts and accounting system.[59]

Not only are these obligations often inconsistent with the fast-changing environment in which providers of advanced services operate, many of these requirements have little or no relevance to the provision of value-added services in a highly competitive market.[60] Indeed, the genesis of and need for many of these requirements is the monopoly environment in which telecommunications services were historically offered and the need to safeguard the public from anti-competitive abuses.[61] In fact, AOL agrees that these obligations can be extremely onerous, even for telecommunications carriers. As such, sound policy dictates that deregulation remain the overarching goal, not only for new entities, but for today's telecommunications carriers as well.

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[59] 47 U.S.C. §§ 204, 205, 213, 214, 218, 220.

[60] The FCC has explicitly acknowledged as much, even in the case of competitive telecommunications services. See, e.g., First Report and Order, Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 85 FCC 2d 1, 31 (1980) ([T]he economic underpinning of our proposal to streamline the regulatory procedures for non-dominant carriers flows from the fact that firms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, would contravene Sections 201(b) and 202(a) of the Act. . . .). See also, Report and Order, Petition of New York State Public Service Commission to Extend Rate Regulation, 10 FCC Rcd 8187, 8190, ¶ 17 (1995) (reaffirming that the measure of reasonableness under Section 201 should be found in "rates that reflect or emulate competitive market operations); Second Report and Order, Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, 11 FCC Rcd 20730, 20752-53, ¶ 42 (1996) ("[W]e believe that competitive forces will ensure that nondominant carriers' non-price terms and conditions are reasonable."), *stayed on other grounds*, MCI Telecommunications Corp. v. FCC, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

[61] See, e.g., Elkhart Tel. Co. v. Southwestern Bell Tel. Co., 11 FCC Rcd 1051 (finding a Section 201(a) violation because the carrier failed to provide interconnection upon reasonable request); Competitive Telecommunications Ass'n; In the Matter of Advanced Telecommunications Corporation, 8 FCC Rcd 1224 (1993); Telecom*USA, Inc., 8 FCC Rcd 1240 (1993); Allnet Communication Services, Inc., 8 FCC Rcd 1252 (1993); in which cases the FCC found that New Jersey Bell and The Chesapeake and Potomac Telephone Companies -- affiliates of Bell Atlantic -- and a number of other local exchange carriers unlawfully charged excessive rates to long distance carriers; Pacific Bell, 6 FCC Rcd 7467 (1991) (consent decree resolving FCC charge that Pacific Bell violated FCC cost accounting rules); New England Telephone and Telegraph Co. and New York Telephone Co., 7 FCC Rcd 822 (1992) (NYNEX telephone companies entered into a consent decree resolving FCC charges of accounting rule violations); United States v. Western Electric Co., 846 F.2d 1422, 1424-25 (D.C. Cir. 1988), cert. denied, 109 S. Ct. 2619 (1988) (upholding order enjoining BOC from discriminating in the pricing of exchange access and exchange service); NARUC Subcommittee on Accounts, Audit Report on NYNEX Corporation and Affiliates, at 91 (Mar. 24, 1987); NARUC Subcommittee on Accounts, Audit Report on Pacific Telesis, at 1-3 to 1-5 (June 3, 1986); Southern Task Force, NARUC Subcommittee on Accounting, Audit Report on BellSouth, Inc. at 11 (May 16, 1985) (finding extensive evidence of misallocation of personnel and costs from regulated to unregulated operations).

Critically, even subjecting advanced service providers to minimal or streamlined regulation as telecommunications carriers would be incredibly burdensome. For instance, if the FCC decided to forbear generally except from the obligations for advanced service providers to contribute to public policy funds such as universal service and the Telecommunications Relay Service ("TRS") fund, and certain "core" common carrier obligations such as nondiscrimination, interconnection and resale, advanced service providers would still be subject to an enormous resource drain.

First, based upon current requirements, federal universal service and TRS payment obligations would constitute an additional "tax" of roughly 4% of revenues.[62] These new charges would be on top of the already increased telecommunications costs that ISPs and consumers now pay to access the Internet, including new second line and multi-line business charges.[63] The ISP business is fiercely competitive, with razor thin profit margins. Consequently, these new charges would likely flow through to consumers, who would then be faced again with larger bills. Under such a scenario, consumer demand, and the attendant benefits of increased growth, would diminish.

Second, this approach ignores the likely interest that many state regulatory commissions would almost certainly have in ensuring that service providers operate in accordance with the requirements of their respective jurisdictions. As noted above, these obligations can be extensive

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[62] See Public Notice, First Quarter 1998 Universal Service Contribution Factors Revised and Approved, CC Docket No. 96-45, DA 97-2623 (rel. Dec. 16, 1997) and Telecommunications Relay Services and the Americans with Disabilities Act of 1990, Order, DA 97-2676 (rel. Dec. 22, 1997). Note that in addition to federal universal service support payments, states may also require carriers to make contributions to state universal service mechanisms. See 47 U.S.C § 254(f).

[63] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing and End User Common Line Charges, First Report and Order, FCC 97-158 at ¶ 198 (adopted May 7, 1997) ("Access Charge Reform Order"). See Ex Parte Presentation of America Online, Inc., Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking at 2-3 (Apr. 29, 1997) (pointing out that requiring multi-line business and second line customers to bear the burden of higher, uneconomic Subscriber Line Charges and Presubscribed Interexchange Carrier Charges disproportionately impacts Internet online users).

and costly. Moreover, rather than allowing advanced service providers to focus their resources where they have the greatest potential benefits -- the development of innovative products and services -- attention and resources would be diverted to addressing and complying with the myriad of regulatory obligations that they would find themselves suddenly subject to.

AOL recognizes the importance of ensuring that universal service remains a basic goal of telecommunications policy and believes strongly that consumers in high-cost and rural areas should have the same access to essential telecommunications services as those that reside in more populated areas. As a residential, consumer-oriented service, AOL is particularly cognizant of the need to ensure that services are ubiquitous and affordable. The services of AOL and other ISPs enable consumers who live outside of major metropolitan areas to participate in a larger community they would not otherwise have access to. It is for this very reason that as we move to a data-based infrastructure, government policy must not favor old technology and services over emerging services. If the focus is solely on the need to promote the universal availability of the circuit-switched network, we run the risk of ignoring the need to develop and foster the data-friendly, packet-switched networks that will be essential to all consumers in the future.

Moreover, while the potential of future service developments, such as widescale utilization of IP-based telephony, may legitimately cause policy makers to think about the best role for regulation, it would be altogether shortsighted to extend traditional regulation to non-telecommunications carriers. Especially in light of the incredible pace of technological development, it is virtually impossible to know how markets and services will develop. Indeed,

the history of communications has proved to be a series of "perceived threats" that materialized as true plusses for the public interest.[64]

Critically, AOL and other providers of advanced and information services are not "free-riders" on the public telephone network, including with respect to paying their fair share of universal service contributions. As a heavy user of telecommunications services provided by incumbent local exchange carriers ("ILECs"), competitive LECs and interexchange carriers, AOL will be required to pay increased rates as these carriers pass on their universal service and other contribution obligations in their rates.[65] Singling out providers of advanced services by requiring them to make an additional contribution would be an impermissible, unjustifiable and punitive instance of "double taxation."

Similarly, there is no basis to overturn suddenly decades of successful public policy on the grounds that Internet online services are somehow causing uncompensated network costs for the public switched telephone network or will undermine universal service by causing "bypass" of telecommunications services. First, after reviewing thousands of pages of legal and economic submissions, the FCC unequivocally found that the growth of information service traffic has not imposed uncompensated costs on incumbent LECs.[66] Not only do information and advanced service providers purchase local business lines and high capacity dedicated data lines, they pay

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[64] In fact, almost every advance in technology has provoked similar reactions from incumbent providers. When RCA unveiled television at the 1939 World's Fair, radio broadcasters claimed it would destroy the radio industry. Television broadcasters argued that they would be displaced by cable television. Telephone companies argued that cellular services would displace traditional wireline services. None of these dire predictions has come to pass. See Remarks by Dennis R. Patrick, Chairman, Federal Communications Commission, Before the American Women in Radio and Television, New York, 1989 FCC LEXIS 861 (May 12, 1989); Remarks of Reed E. Hundt, Chairman, Federal Communications Commission, to Citizens for a Sound Economy, 1997 FCC LEXIS 3153 (June 18, 1997); Amendment of the Commission's Rules to Allow the Selection Among Mutually Exclusive Competing Cellular Applications, Report and Order, 98 FCC 2d 175, 194-95 (1984).

[65] AOL spent over $900 million for telecommunications services in fiscal year 1998 and expects to spend roughly $1.2 billion for these services in fiscal year 1999.

[66] Access Charge Reform Order at ¶ 347.

federally mandated subscriber line charges and in some cases, a special access surcharge.[67] Second, far from being a burden on the telephone network, Internet and other advanced services have encouraged its growth and a corresponding increase in the use of telecommunications services.[68] Available data from the incumbent local telephone companies themselves demonstrates that they continue to benefit from the growth of the Internet and other information services, as demand for second lines and related services has skyrocketed.[69]

II. THE FCC's IMPLEMENTATION OF THE UNIVERSAL SERVICE PROVISIONS OF SECTION 254 OF THE TELECOMMUNICATIONS ACT IS CONSISTENT WITH THE PLAIN MEANING OF THE STATUTORY LANGUAGE OF THE TELECOMMUNICATIONS ACT

In Section 254 of the 1996 Act, Congress directed the FCC to address universal service issues based upon defined guiding principles, with the goal of preserving and advancing this fundamental policy goal.[70] As required, a Federal-State Joint Board was convened, a Recommended Decision was issued, and on May 8, 1997, an implementing order was released

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[67] See Lee L. Selwyn and Joseph W. Laszlo The Effect of Internet Use on the Nation's Telephone Network, at 25-26 (Jan. 22, 1997), attached to Comments of the Internet Access Coalition, CC Docket No. 96-262, filed Jan. 29, 1997.

[68] From 1992 to 1996, telecommunications revenues increased from $160 billion to $222 billion. See "Trends in Telephone Service: March 1997," FCC, Table 36, "Telecommunications Industry Revenue: TRS Fund Worksheet Data," FCC, Nov. 1997, Table 2.

[69] See Ameritech 10-Q (quarterly period ended September 30, 1997) (second line additions by residential and small business customers contributed to access line growth, due to continuing demand for Internet access and data transport capabilities); Bell Atlantic 10-Q (quarterly period ended September 30, 1997) (higher network usage volumes, resulting primarily from access line growth, contributed to revenue growth); BellSouth 10-Q (quarterly period ended September 30, 1997) (increases in local service revenues due primarily to 4.7% growth in number of access lines in service, and 38.6% of access line growth was attributable to increase in residential lines); GTE 10-Q (quarterly period ended September 30, 1997) (increased revenues driven by growth in customer lines and network usage); SBC Communications, Inc. 10-Q (quarterly period ended September 30, 1997) (increases in demand for access lines were primary factor in revenue growth); SNET 10-Q (quarterly period ended September 30, 1997) (significant growth in second residential lines contributed to strong revenue growth); U S West Communications, Inc. 10-Q (quarterly period ended September 30, 1997) (28% increase in second-line installations and resulting growth in total access lines were predominant causes of increased local service revenues). To a large extent, technological and service innovation by incumbent carriers has been slow or non-existent, with carriers' earnings reflecting growth in their core services for which they retain a virtual monopoly. Timothy K. Horan, BancAmerica Robertson Stephens, Large Telephone Industry Report, at 1 (Jan. 5, 1998).

[70] These principles include the goals of quality services at affordable rates; access to advanced services; access in rural and high cost areas, equitable and non-discriminatory contributions by all telecommunications services providers: specific and predictable support mechanisms and access to advanced telecommunications

by the Commission.[71] In its Order, the FCC concluded that to fulfill best the Congressional universal service mandate, certain non-telecommunications services may properly be deemed within the scope of supportable "universal services" for eligible schools and libraries under the language of Section 254. This decision, which is wholly consistent with the plain language of the 1996 Act, both maximizes choice for schools and libraries and promotes competitive neutrality.

First, in determining which "services" should be eligible for support in conjunction with the schools and libraries portion of the universal service fund, the FCC relied upon the express language of Section 254 (c)(3), granting it authority to "designate additional services for support."[72] The FCC correctly noted that if Congress intended to limit "additional services" to "additional telecommunications services," it could have employed language to that effect, as it had done elsewhere in Section 254.[73] Similarly, pursuant to the language of Sections 254(h)(1) and 254(h)(2), the Commission reasonably concluded that Congress intended that in addition to "telecommunications services," "advanced" and "information" services should also be available to schools and libraries.[74]

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services for schools, health care and libraries. 47 U.S.C. §§ 254(b)(1)-(6). See also H.R. Conf. Rep. No. 104-458, at 128.

[71] Federal-State Joint Bd. on Universal Service, Recommended Decision, 12 FCC Rcd 87 (rel. Nov. 8, 1996); Federal-State Joint Bd. on Universal Service, Report and Order, 12 FCC Rcd 8776 (rel. May 8, 1997).

[72] See Universal Service Order, at 9009, ¶ 437. In light of accompanying legislative history, this interpretation makes sense. For example, Congress noted that the FCC could include "dedicated data links and the ability to gain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State and local governments, and information services which can be carried over the Internet." See H.R. Conf. Rep. No. 104-458, at 133. Given this language, the inclusion of "Internet access" among supportable services is entirely reasonable.

[73] See Universal Service Order, at 9009-9011, ¶¶ 438-39.

[74] See Universal Service Order, at 9002, ¶¶ 424-25, 9008-23, ¶¶ 436-63. Indeed, the FCC emphasized the relevant legislative history upon which it relied:

> The provisions of subsection [254] (h) will help open new worlds of knowledge, learning and education to all Americans -- rich and poor, rural an urban. They are intended for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of illness, to

Having so interpreted Section 254, the FCC also properly concluded that to maximize diversity of choice for participating schools and libraries and to ensure that its rules are "competitively neutral,"[75] service providers should not be limited only to "telecommunications carriers" and their affiliated companies. Accordingly, the Commission determined that "Congress intended that schools and libraries secure the most cost-effective, readily available Internet access and internal connections through vigorous competition among all service providers."[76] Through this approach, the FCC noted it could "empower schools and libraries to take the fullest advantage of competition to select the most cost-effective provider of Internet access and internal connections, in addition to telecommunications services" rather than require "schools and libraries to procure these supported services [Internet access and internal connections] only as a bundled package with telecommunications services."[77] This outcome not only fulfills the plain language of the 1996 Act, but is sound public policy that will best serve the interests of our schools and libraries and the citizens they serve.[78] To limit the range of service providers only to telecommunications carriers would not only create an environment where non-carriers could not compete, but more importantly, limit the choices of schools and libraries in pursuing their educational goals.

Americans everywhere via schools and libraries. This universal service access will assure that no one is barred from benefiting from the power of the Information Age.

See H.R. Conf. Rep. No. 104-458, at 132-33.

[75] In addition to being a bedrock prerequisite to fair competition, the requirement that the FCC's rules be "competitively neutral" is set forth in Section 254(h)(2), 47 U.S.C. § 254(h)(2).

[76] See Universal Service Order, at 9087, ¶ 595.

[77] See Universal Service Order, at 9086-87, ¶ 594.

[78] The Commission also stressed that "it would create an artificial distinction to exclude those non-telecommunications carriers that do not have telecommunications carrier subsidiaries or affiliates owned or controlled by them, that choose not to create them, or that do not bid together with telecommunications carriers." Universal Service Order, at 9085, ¶ 590.

Finally, the FCC's interpretation of Section 254 to require only "telecommunications carriers" to contribute to the support of universal service is wholly consistent with the plain language of the 1996 Act. Indeed, as the FCC expressly noted, Section 254(d) explicitly refers to "Telecommunications Carrier Contribution," and states that "every telecommunications carrier that provides interstate telecommunications services shall contribute . . .,"[79] an obligation that is clearly distinct from the right to participate in the universal service program. Because Internet access services are not telecommunications services, the FCC correctly excluded them from its list of "contributing carriers."[80] Given the plain language of the statute, the Commission should adhere to its well-grounded analysis of the statutory distinctions drawn between contributing supporters and eligible providers of advanced services.

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79. 47 U.S.C. § 254(d).

80. See Universal Service Order, at 9179-9181, ¶¶ 788-790.

CONCLUSION

AOL urges the FCC to underscore in its Report to Congress the tremendous benefits American consumers have reaped from long standing market-driven policies and clearly reaffirm the bases for its decision not to alter policy by subjecting ISPs and other providers of advanced services to telecommunications regulation. As the foregoing comments indicate, the Commission's decision was firmly rooted in the plain language of the 1996 Act and provides a solid footing for unprecedented economic growth and other public interest benefits to flourish in the future.

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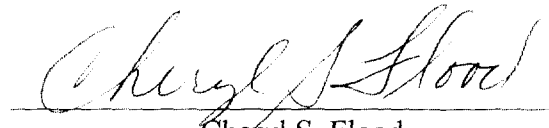
CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 26th day of January, 1998, I caused a copy of the foregoing "Comments of America Online, Inc." to be sent by messenger (*) or by first class mail, postage prepaid to the following:



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